



The Attorney General of Texas

December 31, 1982

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Mr. James T. Russell
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Open Records Decision No. 340

Re: Whether law enforcement
records relating to death
are available to the public
under the Open Records Act

Dear Mr. Russell:

You have asked us to decide whether an investigatory file must be made available for public inspection pursuant to the Open Records Act, article 6252-17a, V.T.C.S. You claim that the information requested is excepted from public disclosure under article 6252-17a, sections 3(a)(1), (3), (8), and (17).

The file contains information relating to a June 7, 1981 incident during which a police officer fatally shot a suspect. In accordance with standard procedure, there was an internal investigation and police records were transferred to your office for presentation to a grand jury. The matter was presented to the Bell County Grand Jury, but no indictment was returned. In October of 1981, your office supplied a copy of the file, pursuant to a subpoena to produce records, to the federal grand jury for the Western District of Texas. That investigation is still pending in the Civil Rights Division of the Department of Justice.

You state that within thirty days of the incident the suspect's widow filed a claim for damages against the city, a prerequisite to filing suit against the city. Subsequently, the widow's attorney has requested the following from your office:

1. the offense report relating to the incident;
2. the names and addresses of witnesses;
3. the statements of witnesses; and
4. reports prepared as the result of an investigation.

The city attorney states that he has also received a request for disclosure from the widow's attorney and has determined that, in view of the potential litigation, the information should be withheld.

It is our opinion that section 3(a)(8) of the Open Records Act excepts the requested material from public disclosure. That section is applicable to:

records of law enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law enforcement agencies which are maintained for internal use in matters relating to law enforcement.

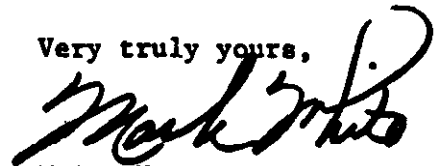
Police investigations into incidents of death by other than natural causes are rarely closed completely. Open Records Decision No. 127 (1976). Although the Bell County Grand Jury and the District Attorney have discontinued their investigation, the ongoing federal investigation keeps alive the possibility of criminal charges. In the case Houston Chronicle Publishing Company v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App. - Houston [14th Dist.] 1975), writ ref'd n.r.e., 536 S.W.2d 559 (Tex. 1976), the court stated that information such as the witnesses names and statements requested here should be excepted from public disclosure because:

To open such material... in all cases might endanger the position of the State in criminal prosecutions by the use of such materials to the disadvantage of the prosecution.

Houston Chronicle at 187.

The facts in this case are distinguishable from the facts in Open Records Decision No. 252 (1980). In the three requests consolidated in that decision, there was no continuing investigation into the deaths of the victims. The sheriff's office had determined that the files should be administratively closed. In the case presently before us, however, there is a possibility of criminal charges since the federal investigation is still pending. We need not reach your claims based on 3(a)(1), 3(a)(3), or 3(a)(17).

Very truly yours,



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APPROVED:
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